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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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EXAMINER

PHILOGENE, PEDRO

ART UNIT PAPER NUMBER

3733

DATE MAILED: 09/08/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

**Application No.**

10/792,358

**Applicant(s)**

BRANCH ET AL.

**Examiner**

Pedro Philogene

**Art Unit**

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 03 March 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-51 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-6, 21, 23-30, 32-34, 43-45 and 1718 is/are rejected.
- 7) ☒ Claim(s) 7-16, 19, 20, 22, 31, 35-42 and 46-51 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 3/3/04, 7/12/04, 10/12/04, 9/12/05
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1,6, 17, 18,21,23-25 are rejected under 35 U.S.C. 102(b) as being anticipated by Grieshaber (2,693,795).

With respect to claim 1, Grieshaber discloses a retractor assembly comprising a first retractor portion (31) having a proximal end and a distal end and being positionable in an incision; a second retractor portion (39) having a proximal end and a distal end and being positionable in the incision opposite the first retractor portion, the first and second retractor portions defining an axis extending there between; a separation instrument (10) coupled between the proximal ends of the first and second retractor portions and being offset to one side of the axis; as best seen in FIG.1, the separation instrument being operable to move the first and second retractor portions along the axis from an insertion configuration wherein the first and second retractor portions are adjacent one another to a second configuration wherein the first and second portions are separated from one another; and an intermediate retractor assembly (13) removably mountable to the separation instrument, the intermediate retractor assembly including a linking arm (46) extending from the separation instrument toward the first and second retractor portions to a retractor blade (64), the

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retractor blade being transversely oriented to the linking arm and being positionable in the incision between the first and second retractor portions when the linking arm is mounted to the separation instrument and the first and second retractor portions are in the second configuration.; as set forth in column 2, lines 20-80, column 3, lines 1-85, column 4, lines 173; and as best seen in FIGS.1-9.

With respect to claims 6,17,18,21,23-25, Grieshaber discloses all the limitations; asset forth in column 2, lines 20-80, column 3, lines 1-85, column 4, lines 173; and as best seen in FIGS.1-9.

Claims 26, 27, 32-34,43-45 are rejected under 35 U.S.C. 102(b) as being anticipated by Cocchin et al. (6,224,545).

With respect to claims 26 and 43, Cocchin et al disclose a first and second retractor portions (91,92) a separation instrument, as best seen in FIG.2; coupled between the proximal ends and the first and second retractor portions and being offset to one side of the first axis, the separation instrument being operable to move the first and second retraction portions away from one another along the first axis, as set forth in column 4, lines 6-18, the separation instrument including a first engagement arm extending (72) extending from the proximal end of the first retractor portion along a second axis transverse to the first axis and a second engagement arm (74) extending from the proximal end of the second retractor portion along a third axis transverse to the first axis, wherein the engagement arms each includes a portion adjacent the respective retractor portion that is rotatable about the respective axis thereof to pivot the respective

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retractor portion engaged thereto about its proximal end; as set forth in column 5, lines 20-67, column 6, lines 1-67; and as best seen in FIGS.1-20.

With respect to claims 27,32-34,44,45, Cocchin et al disclose all the limitations, asset forth in column 5, lines 20-67, column 6, lines 1-67; and as best seen in FIGS.1-20.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 28,29,30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cocchin et al (6,224,545) in view of Koros et al (6,139,493).

With respect to claims 28-30, it is noted that Cocchin et al did not teach of intermediate third and fourth retractor portions; as claimed by applicant. However, in a similar art, Koros et al evidences the use of a third and fourth retractor portions to provide a clearer or greater view of the operating site.

Therefore, given the teaching of Koros, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the device of Cocchin et al, as taught by Koros et al to provide a clearer or greater view of the operating site.

***Allowable Subject Matter***

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Claims 7-16, 19,20,22,31,35-42,46-51 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

5,618,260	4-1997	Caspar et al.
6,074,343	6-2000	Nathanson et al.
2,670,731	3-1954	Zoll et al.
1,613,141	1-1927	Stein
6,196,969	3-2001	Bester et al.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Pedro Philogene whose telephone number is (571) 272-4716. The examiner can normally be reached on Monday to Friday 6:30 AM to 4:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eduardo Robert can be reached on (571) 272 - 4719. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Pedro Philogene  
August 30, 2006



PEDRO PHILOGENE  
PRIMARY EXAMINER